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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re BENTLEY G. et al., Persons Coming
Under the Juvenile Court Law.

B209430

(Los Angeles County
Super. Ct. No. CK08009)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JENNIFER L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Jennifer L. (Mother) appeals from the juvenile court's denial of a Welfare and Institutions Code section 388¹ petition. She argues that the court should have granted a hearing on the petition. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Preliminary facts.*

Mother was removed from the care of her own mother. Mother has a history of failed foster care and group home placements.

Mother abused and neglected two children, the first of whom was born when Mother was 16 years old. Mother reported that the father of these two children picked them up for a visit and never returned. Mother does not know the whereabouts of these children, whom she has not seen in at least 10 years. These two children are *not* the subject of this appeal.

The subjects of this appeal are two other children born to Mother:

(1) Bentley G. was born in 2003; he is almost six years of age; and (2) J. K. was born in 2005; she is almost four years old. The two children have different fathers and both fathers have a history of substance abuse.²

Mother has used methamphetamine since she was an adolescent. She stopped using drugs when she was pregnant with Bentley, but then relapsed. In 2005, when Mother was pregnant with J., Mother enrolled in MIRACLE. Mother went into labor during her first week of treatment. From April 2005 until May 2006, Mother, Bentley, and J. were in at least five treatment facilities. During this time, Mother completed one program and enrolled in vocational training. She was sober for short periods of time and then would return to drugs. For example, after graduating from a program in June 2006, Mother stayed sober for about five months. Mother resumed

¹ All further references are to the Welfare and Institutions Code.

² The two fathers are not parties to this appeal.

using drugs in November or December 2006, at which time she was arrested for drug use and sentenced to a treatment program. When Mother and her children were not in a facility, they were homeless.

Mother has an extensive criminal history that includes two convictions for taking a vehicle without the owner's consent, and possession of a controlled substance, for which a warrant was issued after Mother failed to appear. Additionally, the child abuse hotline received three telephone calls relating to Bentley and J., including one in April 2005 for which Mother received a month of voluntary service. In June 2005, the Department of Children and Family Services (the Department) could not fully assess an allegation of sexual abuse because Mother left the drug rehabilitation facility where she had been residing with Bentley and J. before an investigation could take place.

2. The circumstances that brought the family to the attention of the dependency court.

On January 14, 2007, Mother, Bentley, and J. were found inside a stolen car. The family was homeless at the time. Mother was arrested on an outstanding felony warrant and two misdemeanor warrants. Bentley and J. were placed in protective custody and released to the Department. Mother admitted she had a problem with methamphetamine, which she admitted ingesting that week. As discussed below, Mother remained in custody until March 2007.

On January 18, 2007, the Department filed a Section 300 petition alleging Mother had a long history of substance abuse, was a current abuser of methamphetamine, and was incarcerated on January 14, 2007, for a felony warrant.

3. The initial proceedings and Mother's incarcerations.

Bentley and J. were detained on January 18, and 19, 2007. The Department was ordered to provide reunification services and monitored visitation.

At the February 22, 2007, adjudication and disposition hearing, the dependency court made true findings on the petition and declared Bentley and J. dependents. The two children were removed from Mother's custody. Mother was granted monitored visitation and reunification services. Thereafter, Bentley and J. were placed in a number of different foster care homes.

In March 2007, Mother commenced visiting the children, however, the continuity of these visits was interrupted when Mother was incarcerated. The children were receiving services. The six-month hearing was continued to September 25, 2007, for a contested hearing.

Mother remained incarcerated for a probation violation until March 2007. She was resentenced to treatment, and on March 8, 2007, began a six-month program at the Salvation Army Adult Rehabilitation Center. Mother was discharged less than a month later for noncompliance. Mother was immediately placed by MIRACLE in a one-year treatment program. She returned to criminal court two weeks later, and was jailed for a two-week period in April 2007. In May 2007, Mother completed two dependency court-related classes and in June 2007, she started parenting classes. Mother visited the children between July and September 2007.

In August 2007, Mother did not show for drug testing and she left the program in which she was enrolled.

4. Mother flees California and then returns.

Mother violated her probation and in September 2007, moved to Missouri. Until that time, Mother had regular visits with Bentley and J.

On September 25, 2007, the court held a contested six-month review hearing. The dependency court found that Mother was not in compliance with the case plan and Bentley and J. could not be returned safely to Mother's custody. The court terminated services and set the case for a section 366.26 hearing.

On January 15, 2008, the court continued the scheduled Section 366.26 hearing so the Department could submit a supplemental report. In February 2008, Bentley and J. were placed in a foster home, where they have remained.

Mother's criminal sentence was extended to May 2008 and her probation extended until February 2010. Mother was arrested on an outstanding warrant in February or April 2008, when she returned from Missouri. Mother was released to a criminal-court-ordered lock-down facility operated by the Family Foundations Program. The children's caretaker expressed an interest in adoption. Mother had not visited the children from September 2007 when she left California, until she returned in early 2008.

The May 2008, Section 366.26 hearing was continued. The court granted Mother supervised visits.

5. The Section 388 petition.

On June 26, 2008, Mother filed a Section 388 petition. She requested Bentley and J. be placed with her in her treatment program. Mother alleged there had been changed circumstances because she was currently residing in a program run by the California prison system and the children had been placed in temporary foster care. She averred that in May 29, 2008, she had started a year-long residential program. Mother argued that a change order would benefit the children as the residential program (the Family Foundations Program) was designed to have children placed with their mothers in rehabilitation. A letter from a child development specialist was attached. It stated that Mother had been in the facility since May 23, 2008, and was scheduled to be released on May 23, 2009. The letter also explained that if the children were not placed with Mother in the program, Mother would be forced to leave the program and finish her sentence at a penal institution.

The Section 366.26 hearing and Mother's Section 388 petition were called on July 15, 2008. The Section 366.26 hearing was continued and the court considered the Section 388 petition. The Department reported the following: As of July 9, 2008, Mother had four weekly visits with the children in the facility and the new foster

mother expressed a desire to adopt the children, who were blossoming in their new home. A letter from the Family Foundations Program stated that Mother was compliant with random drug testing, which were negative. The letter acknowledged Mother was only at the beginning of her treatment and therapy and Mother would be returned to prison if the children were not placed with her. The letter stated that separating the two children from Mother would be detrimental to them. A substance abuse counselor reported that the children were bonded to Mother. There was information that Mother had completed a relapse prevention program on June 27, 2008.

The dependency court summarily denied Mother's request to set the Section 388 petition for hearing. The court noted that Mother was just beginning to address her long history of substance abuse and had not visited the children from September 2007 until about February 2008 at which time she was incarcerated. The court found it was not in the children's best interests for them to have contact with Mother and ordered that there were to be no visits pending the next hearing.

Mother appealed from the July 15, 2007, order summarily denying her Section 388 petition.

DISCUSSION

We are not persuaded by Mother's contention that the dependency court abused its discretion in summarily denying her Section 388 petition. We affirm.

1. *Section 388 petitions.*

A Section 388 petition seeks to modify the status quo in a dependency case. "Under section 388, a parent may petition the court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that [(1)] there is a change of circumstances or new evidence, and [(2)] the proposed modification is in the minor's best interests. [Citations.]" (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1119; Cal. Rules of Court, rule 5.570(d), (e), (h)(1).) The parent seeking modification "need only make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]" (*In*

re Marilyn H. (1993) 5 Cal.4th 295, 310.) The petition is to “be liberally construed in favor of its sufficiency. [Citations.]” (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.)³

“ ‘The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.’ [Citations.] ” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505; accord, *In re Aaron R.* (2005) 130 Cal.App.4th 697, 705.)

The ruling on a Section 388 petition is addressed to the sound discretion of the juvenile court, and will not be disturbed on appeal without a showing of a clear abuse of that discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416; *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348.)

Here, with regard to the first prong, Mother has not made a prima facie showing that there has been a change of circumstances or new evidence since September 2007 when services were terminated or that the proposed modification is in the children’s best interests. Mother has a long history of criminal behavior and substance abuse, beginning when she was a teenager. Over the years, she has not completed a number of drug and rehabilitation programs. Between January 2005 and August 2007, Mother was in at least five different drug treatment programs. Although Mother completed a residential program in June 2006, she relapsed five months later. She fled the jurisdiction in September 2007, violating probation. Her probation period was extended to 2010. Given this history, the fact that Mother has recently participated in a drug program beginning May 29, 2008, for a single month, does not show a significant change of circumstances, particularly because she is doing

³ Section 388 states in part: “(a) Any parent . . . having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . . [¶] . . . [¶] (d) If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held”

so in a residential correctional facility. This history does not demonstrate a change in circumstances. Prior to being confined, Mother had not made any concerted effort toward rehabilitation. (Compare with *In re Hashem H.* (1996) 45 Cal.App.4th 1791 [juvenile court abuses discretion in summarily denying Section 388 petition when parent has consistently participated in individual therapy, regularly visited with child, held a full-time job, and provided stable home for child].) While we applaud Mother's recent efforts, they are of short duration and demonstrate that Mother is at the beginning stages of an attempt to change her life. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 [petition alleging changing circumstances, as compared to changed circumstances, is insufficient].)

With regard to the second prong, Mother has not made a prima facie showing that the proposed modification is in the children's best interests. Among the factors juvenile courts consider in determining whether a proposed change of order is in a child's best interest are: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

Here, the problems necessitating the removal of the children from Mother's care were serious. They included Mother's long history of criminal and substance abuse and her unstable lifestyle, exacerbated by her inability to comply with court orders, such as fleeing the jurisdiction. Even though Mother professes substantial love for her two children, the record does not demonstrate a strong bond between Mother and the children. Mother has not maintained regular contact with the children. Mother had stopped visiting the children when she fled to Missouri and

resumed visitation only when she was incarcerated upon returning to California. Further, since being placed in the foster home in February 2008, the children have been blossoming. J. is involved in dance. Bentley has participated in sports, weekly therapy, and is taking medication. The foster mother has a commitment to adopting the children. Lastly, the evidence does not demonstrate that Mother's problems have been removed or ameliorated. Rather, Mother has taken the first steps required to address her numerous problems, including her lengthy history of drug addiction.

The dependency court did not abuse its discretion in summarily denying Mother's Section 388 petition.

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.